

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Dimple Agarwal, M.D.

File No. 800-2016-022551

**Physician's and Surgeon's
Certificate No. A 66261**

Respondent

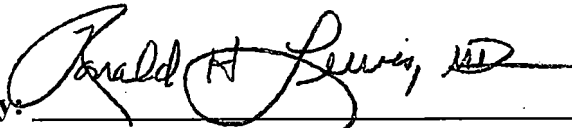
DECISION

**The attached Stipulated Settlement and Disciplinary Order is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on March 7, 2019.

IT IS SO ORDERED February 5, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
Deputy Attorney General
4 State Bar No. 155553
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 800-2016-022551

15 **DIMPLE AGARWAL, M.D.**
16 **PO Box 549**
Palm Springs, CA 92263

OAH No. 2018070843

17 **Physician's and Surgeon's Certificate No.**
18 **A66261**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 Respondent.

20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Martin W. Hagan,
26 Deputy Attorney General.

27 *////*

28 *////*

2. Respondent Dimple Agarwal, M.D. (Respondent) is represented in this proceeding by Deborah Olsen deBoer, Esq., of Kramer, deBoer & Keane, whose address is 74770 Highway 111, Suite 201, Indian Wells, CA 92210.

3. On or about August 14, 1998, the Board issued Physician's and Surgeon's Certificate No. A66261 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-022551, and will expire on December 31, 2019, unless renewed.

JURISDICTION

4. On May 16, 2018, Accusation No. 800-2016-022551 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 16, 2018. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2016-022551 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-022551. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent agrees that, at an administrative hearing, Complainant could establish a
3 *prima facie* case with respect to the charges and allegations in Accusation No. 800-2016-022551,
4 and that she has thereby subjected her Physician's and Surgeon's Certificate No. A66261 to
5 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
6 discipline as set forth in the Disciplinary Order below.

7 9. Respondent further agrees that if an accusation and/or petition for revocation of
8 probation is filed against her before the Board, or, if she ever petitions for early termination or
9 modification of probation, all of the charges and allegations contained in Accusation No. 800-
10 2016-022551 shall be deemed true, correct and fully admitted by Respondent for purposes of that
11 proceeding or any other licensing proceeding involving Respondent in the State of California or
12 elsewhere.

13 10. The *prima facie* admissions made by Respondent herein are only for the purposes of
14 this proceeding, or any other proceedings in which the Board or other professional licensing
15 agency in the State of California is involved, and shall not be admissible in any other criminal or
16 civil proceeding.

17 CONTINGENCY

18 11. This stipulation shall be subject to approval by the Board. Respondent understands
19 and agrees that counsel for Complainant and the staff of the Board may communicate directly
20 with the Board regarding this stipulation and settlement, without notice to or participation by
21 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
22 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
23 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
24 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
25 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
26 be disqualified from further action by having considered this matter.

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12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

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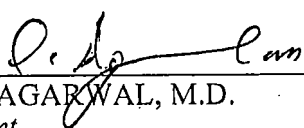
1 provider with any information and documents that the approved course provider may deem
2 pertinent. Respondent shall participate in and successfully complete the classroom component of
3 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
4 successfully complete any other component of the course within one (1) year of enrollment. The
5 medical record keeping course shall be at Respondent's expense and shall be in addition to the
6 Continuing Medical Education (CME) requirements for renewal of licensure.

7 A medical record keeping course taken after the acts that gave rise to the charges in the
8 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
9 or its designee, be accepted towards the fulfillment of this condition if the course would have
10 been approved by the Board or its designee had the course been taken after the effective date of
11 this Decision. Respondent shall submit a certification of successful completion to the Board or its
12 designee not later than 15 calendar days after successfully completing the course, or not later than
13 15 calendar days after the effective date of the Decision, whichever is later. Failure to participate
14 in and successfully complete the medical record course requirements as outlined above shall
15 constitute unprofessional conduct and be grounds for further disciplinary action.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Deborah deBoer, Esq. I understand the stipulation and the effect it
19 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
20 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
21 Decision and Order of the Medical Board of California.

22
23 DATED: 12/14/18


24 DIMPLE AGARWAL, M.D.
Respondent

25 ////

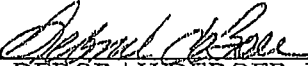
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1 I have read and fully discussed with Respondent Dimple Agarwal, M.D., the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve of its form and content.

4 DATED: December 14, 2018


DEBORAH DEBOER, ESQ.
Attorney for Respondent

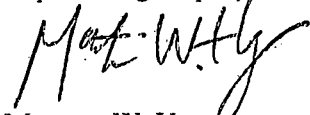
6 ENDORSEMENT

7 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
8 submitted for consideration by the Medical Board of California.

9 DATED: 12/19/2018

Respectfully submitted,

10 XAVIER BECERRA
11 Attorney General of California
12 MATTHEW M. DAVIS
13 Supervising Deputy Attorney General


14 MARTIN W. HAGAN
15 Deputy Attorney General
16 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-022551

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 16 20 18
BY K. Voong ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
12 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2016-022551

14 Dimple Agarwal, M.D.
15 PO Box 549
Palm Springs, CA 92263

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. A 66261,

18 Respondent.

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about August 14, 1998, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A 66261 to Dimple Agarwal, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on December 31, 2019, unless renewed.

28 ////

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"...

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1 “(f) Any action or conduct which would have warranted the denial of a
2 certificate.

3 “....”

4 6. Section 2266 of the Code states:

5 “The failure of a physician and surgeon to maintain adequate and accurate
6 records relating to the provision of services to their patients constitutes
7 unprofessional conduct.”

8 **CAUSE FOR DISCIPLINE**

9 **(Repeated Negligent Acts)**

10 7. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
11 by section 2234, subdivision (c), of the Code, in that she committed repeated negligent acts in her
12 care and treatment of patient A¹ as more particularly alleged hereinafter:

13 8. On or about March 8, 2016, at approximately 8:45 a.m., patient A, a then 82-year-old-
14 male presented to the Menifee Valley Medical Center Emergency Department with weakness,
15 hiccups, nausea and vomiting for the past three days. Patient A had a history of coronary artery
16 disease (CAD), previous myocardial infarction, three vessel coronary artery bypass graft,
17 hypercholesterolemia, hypertension, chronic kidney disease, and previous cholecystectomy.
18 Patient A was evaluated by Dr. M.M., the emergency room physician, and his labs were
19 significant for white blood cell (WBC) of 56.7, creatinine level of 1.2, albumin of 3, elevated
20 lipase and amylase. A chest x-ray showed asymmetric right apical density and CT of the chest
21 revealed a right upper lobe 45 x 43 mm mass consistent with neoplasia, fatty liver, and bilateral
22 adrenal nodules. No acute changes were noted on the EKG and the cardiac markers were
23 negative for ischemia. Dr. M.M.'s impression was generalized weakness, acute coronary
24 syndrome, SIRS and leukocytosis. Patient A was admitted at approximately 10:45 a.m. and his
25 care was transferred to Respondent.

26 ////

27 _____
28 ¹ Patient A is being used in place of the patient's name or initials to maintain patient confidentiality.

1 9. On or about March 8, 2016, Respondent had her first inpatient encounter with patient
2 A, at which point she attempted to obtain a history and conducted a physical examination.
3 Respondent documented patient A's chief complaints as nausea, vomiting, shortness of breath,
4 sore throat and coughing. Patient A's physical examination was significant for tachycardia
5 (abnormally rapid heart rate), 96% saturation on room air, tachypnea (abnormally rapid
6 breathing), abnormal lung exam with left base rhonchi. Respondent's assessment was
7 pneumonia, fatigue, coronary artery disease, hypertension and hyperlipidemia and her treatment
8 plan was multiple IV antibiotics, IV fluids, treatment for hiccups, narcotics for pain, anti-nausea
9 agents, megace,² respiratory therapy, physical therapy and DVT (deep vein thrombosis) and ulcer
10 prophylaxis.

11 10. On or about March 9, 2016, Respondent had another inpatient encounter with Patient
12 A, at which time she documented, among other things, intractable hiccups and improved lung
13 function with decreasing rhonchi and "increasing air movement." Respondent's assessment was
14 improving leukocytosis (elevated WBC count), possible paraneoplastic syndrome (physiological
15 response to altered immune system), history of cancer,³ and poor oral intake. The medical record
16 for patient A indicates that his creatinine had worsened to 1.6, with AST at 47, Alk Pos at 140,
17 and WBC of 48.4. Respondent's plan included continue IV antibiotics, continue monitoring
18 leukocytosis and possible paraneoplastic syndrome, continue monitoring poor oral intake and
19 supplement diet, and continue DVT and ulcer prophylaxis.

20 11. On or about March 10, 2016, at approximately 12:54 p.m., Respondent ordered
21 patient A to be discharged. A telemetry report of March 10, 2016, indicated tachycardia ranging
22 from 126 to 131. New medications at time of discharge included Levaquin (levofloxacin) [an
23 oral antibiotic], Thorazine (chlorpromazine), Protonix (pantoprazole) and Megace (megestrol).
24 The "Discharge Medications – Reconciliation List" section of the discharge summary failed to list

25 _____
26 ² Megace is contraindicated in patients who have thrombotic risk associated with
suspected cancer.

27 ³ The specific notation states "#3 history of cancer patient is unaware of his history."
28 There was no reference to any confirmatory evidence regarding the alleged history of cancer
documented in the medical record for the March 9, 2016, progress note.

1 the prescriptions for Protonix (pantoprazole) and Levaquin (levofloxacin). Patient A was advised
2 to continue previous doses of Cardizem, Lipitor, Lopressor, and Valium. According to the
3 discharge summary completed by Respondent, the primary diagnosis was lung cancer, dementia,
4 hiccups, GERD and poor oral intake. The procedures were listed as "none." Respondent
5 documented, among other things, a history of lung cancer, that patient A was admitted secondary
6 to pneumonia, "poor by mouth intake secondary to hiccups," treatment with IV antibiotics and
7 Thorazine (chlorpromazine) and that patient A was advised to continue megace as an appetite
8 stimulant. Respondent ordered follow up appointments with PCP and oncology, home health
9 nurse and home physical therapy. Patient A was discharged despite, among other things,
10 persistent tachycardia, worsening renal function and significant WBC elevation. Respondent
11 failed to adequately advise and/or document other management options for patient A including,
12 but not limited to, continued inpatient care with IV antibiotics and IV fluids; transfer to another
13 facility with additional resources to, among other things, investigate patient A's lung mass in a
14 timely manner; transfer to a nursing facility for continued skilled care; or discharge to home with
15 IV antibiotics.

16 12. On or about March 12, 2016, patient A was readmitted to Menifee Valley Medical
17 Center Emergency Department, after patient A's wife became concerned about her husband's
18 increasing shortness of breath. Patient A was found to have acute respiratory failure, new right
19 chest infiltrate, pneumonia, hypotension, tachycardia, agitation, WBC of 36.7, and acute renal
20 failure with creatinine of 3.8. Patient A was treated with noninvasive respiratory support,
21 supplemental oxygen, IV antibiotics, soft restraints for safety, and was admitted on an inpatient
22 basis under the care of Respondent.

23 13. On or about March 12, 2016, patient A was seen by Respondent in the mid-afternoon,
24 who attempted to obtain a history and conducted a physical examination. Respondent
25 documented that patient A was recently discharged two days ago on palliative care, now returning
26 with worsening cough, fevers, chills, shortness of breath, and increased confusion. Hypotension,
27 tachycardia, and abnormal lung exam were noted. Respondent's assessment was right lung mass
28 (probable lung cancer), history of leukemia, right pneumonia, hypoxemia, and tachycardia

1 secondary to hypoxemia. Respondent's plan was, among other things, antibiotics, cultures, and
2 DVT and gastrointestinal (GI) prophylaxis. According to the medical record for this visit, patient
3 A's wife was made aware of the right lung mass (probable cancer) and the code status was DNR
4 (do not resuscitate) per the patient and his wife's wishes.

5 14. On or about March 13, 2016, patient A was seen and assessed by Respondent in the
6 morning, who noted that patient A was in moderate respiratory distress, very short of breath,
7 unable to answer or follow commands, hypotensive, tachycardic, and tachypnic which required
8 noninvasive respiratory support. Inpatient medications included Ativan, chlorpromazine,
9 antihypertensives, bronchodilators, and antibiotics. Respondent's assessment was pneumonia,
10 right lung "most probably cancer," hypoxemia, leukocytosis, and tachycardia. Respondent
11 documented "overall poor prognosis" and that patient A's wife wanted to speak to hospice
12 services.

13 15. On or about March 14, 2016, patient A was seen by another physician who noted,
14 among other things, that "Destiny Hospice already involved" and patient A's wife was at bedside
15 and updated on his condition with plans to discharge to hospice. Thereafter, patient A was
16 admitted to general inpatient hospice care for comfort measures.

17 16. On or about March 15, 2016, patient A was seen by another physician, Dr. S.G., who
18 documented that patient A had been admitted "to the general inpatient hospice care due to acute
19 respiratory failure, shortness of breath and weakness and started on morphine and Ativan for
20 comfort measures." Respondent passed away on March 15, 2016, at 8:25 p.m. The death
21 certificated signed by Dr. S.G. who listed the causes of death as acute cardiorespiratory arrest,
22 clinical and systemic decompensation, and lung cancer.

23 17. Respondent committed repeated negligent acts in her care and treatment of patient A
24 which included, but was not limited to, the following:

- 25 (a) Respondent failed to adequately assess and/or manage abnormalities
26 discovered during patient A's inpatient care including, but not limited to, persistent
27 tachycardia, lung mass, critically elevated WBC, lipase/amylase elevations,
28 adrenal nodules and acute renal failure;

1 (b) Respondent discharged patient A on March 10, 2016, despite, among
2 other things, persistent tachycardia, worsening renal function, and significant
3 WBC elevation;

4 (c) Respondent failed to adequately advise and/or document other
5 management options for patient A and/or his wife upon discharge including, but
6 not limited to, continued inpatient care with IV antibiotics and IV fluids; transfer
7 to another facility with additional resources to, among other things, investigate
8 patient A's lung mass in a timely manner; transfer to a nursing facility for
9 continued skilled care; or discharge to home with IV antibiotics; and

10 (d) Respondent failed to maintain adequate and accurate medical records
11 by, among other things, failing to adequately document follow up assessments;
12 failing to adequately document palliative or hospice care consultations; recording a
13 primary diagnosis of lung cancer which the medical records failed to support;
14 omitting key problems including, but not limited to, acute renal failure,
15 pancreatitis, and adrenal lesions; failing to adequately document certain procedures
16 such as the CT of March 8, 2016 (showing a lung mass); inaccurate "Discharge
17 Medications – Reconciliation List" on discharge summary; and poor
18 documentation of follow up assessments.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to Maintain Adequate or Accurate Records)**

21 18. Respondent is further subject to disciplinary action under sections 2227 and
22 2234, as defined by section 2266 of the Code, in that she failed to maintain adequate and
23 accurate records in her care and treatment of patient A, as more particularly alleged in
24 paragraphs 7 through 17, above, which are hereby incorporated by reference and
25 realleged as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 66261, issued to Respondent Dimple Agarwal, M.D.;
2. Revoking, suspending or denying approval of Respondent Dimple Agarwal, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent Dimple Agarwal, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: May 16, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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